

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

TRAVCO INSURANCE COMPANY,

Plaintiff,

v.

LARRY WARD,

Defendant.

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Civil Action No.: 2:10-cv-14

PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56 and Local Civil Rule 56, Plaintiff TravCo Insurance Company (“TravCo”) hereby moves for summary judgment on its claim for a declaratory judgment, which seeks a declaration that the homeowners’ insurance policy TravCo issued to Defendant Larry Ward does not provide coverage for an insurance claim made by Mr. Ward involving Chinese-made drywall. The grounds for this motion, which are more fully stated in the accompanying memorandum of law, are as follows:

In September 2009, Mr. Ward made a claim with TravCo seeking coverage for the costs of removing and replacing the Chinese-made drywall in his home, as well as other items that he claims were damaged by sulfuric gases emitted from the drywall. In support of his claim, Mr. Ward provided TravCo with a report prepared by his retained expert, Zdenek Hejzlar, Ph.D. Dr. Hejzlar concluded that the drywall in Mr. Ward’s home released sulfuric gases that produced an unpleasant odor and resulted in damage to the HVAC coils, electrical wiring and other metallic surfaces caused by corrosion. TravCo’s investigation of Mr. Ward’s claim reached similar conclusions. Mr. Ward also filed a lawsuit in the Circuit Court for the City of Norfolk, Virginia against the developer, builder and drywall contractor allegedly responsible for the installation of

Chinese-made drywall in his home. In that suit, Mr. Ward expressly alleged that the drywall was “defective” and that it released sulfuric gases, resulting in damage to various building components caused by corrosion. Mr. Ward’s sworn answers to interrogatories in the state court make similar statements.

TravCo denied Mr. Ward’s claim on several grounds, and it now seeks a declaration from this Court that there is no coverage on those grounds. First, there is no coverage for the cost of removing and replacing the drywall because the drywall itself did not sustain a direct physical loss. Even assuming, *arguendo*, that the drywall sustained a direct physical loss, such a loss would not be covered because it was caused by a latent defect and a defective material. Second, there is no coverage for any losses claimed to be caused by defects in the drywall and/or any gases emitted from the drywall because any such losses are specifically excluded by exclusions in the policy for losses caused by: (1) a latent defect; (2) defective materials; (3) corrosion; and (4) a pollutant (defined to include a gaseous irritant or contaminant). Any one of those four exclusions would be sufficient to bar coverage, but all four apply to Mr. Ward’s loss. Third, there is no coverage for any damage to the contents of the Mr. Ward’s home because the contents are covered only for losses caused by specified perils, and any claimed damage to the contents was not caused by a covered peril. Fourth, even assuming, *arguendo*, that the losses to the personal property were caused by a covered peril, there is no coverage because such losses are excluded as losses caused by faulty or defective materials.

The material facts of this case are undisputed. Accepting as true, for purposes of this motion, Mr. Ward’s own allegations and sworn interrogatory answers in state court, and his own expert’s report, this Court can readily conclude that the homeowners’ policy issued by TravCo to Mr. Ward does not provide coverage for his claimed losses. The undisputed material facts of this

case demonstrate that: (1) the drywall in Mr. Ward's home has not sustained a direct physical loss; (2) the damage Mr. Ward claims to his dwelling was caused by a latent defect, defective materials, corrosion, and pollution (i.e., a gaseous irritant or contaminant); (3) the damage Mr. Ward claims to his personal property was *not* caused by any of the named perils in his insurance policy; and (4) the damage Mr. Ward claims to his personal property was caused by a defective material. Accordingly, TravCo is entitled to a judgment as a matter of law declaring that its policy does not provide coverage for Mr. Ward's loss.

In further support of this Motion, TravCo respectfully submits its Memorandum of Law as well as the Affidavit of Gus N. Wheeler, the Affidavit of John B. Mumford, Jr., Esq., and the exhibits thereto.

WHEREFORE, Plaintiff TravCo Insurance Company respectfully requests that this Court grant its Motion for Summary Judgment and enter a judgment declaring that the policy does not provide coverage for the cost of removing or replacing the drywall in the Ward house and that the policy does not cover any damage claimed to be caused by the drywall or by the discharge of gas from the drywall.

TRAVCO INSURANCE COMPANY

By: _____/s/_____
Counsel

John B. Mumford, Jr. (VSB No.: 38764)
Kathryn E. Kransdorf (VSB No.: 74124)
Hancock, Daniel, Johnson & Nagle, P.C.
4701 Cox Road, Suite 400
Glen Allen, Virginia 23060
jmumford@hdjn.com
kkransdorf@hdjn.com
Phone: (804) 967-9604
Fax: (804) 967-2411

Stephen E. Goldman (*pro hac vice*)
Daniel F. Sullivan (*pro hac vice*)
Wystan M. Ackerman (*pro hac vice*)
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103-3597
sgoldman@rc.com
dsullivan@rc.com
wackerman@rc.com
Phone: (860) 275-8200
Fax: (860) 275-8299

Counsel for TRAVCO Insurance Company

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of March, 2010 I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

Richard J. Serpe
Law Offices of Richard J. Serpe, P.C.
580 East Main Street, Suite 310
Norfolk, Virginia 23510-2322
rserpe@serpefirm.com

_____/s/_____
John B. Mumford, Jr. (VSB No.: 38764)
Kathryn E. Kransdorf (VSB No.: 74124)
Hancock, Daniel, Johnson & Nagle, P.C.
4701 Cox Road, Suite 400
Glen Allen, Virginia 23060
Phone: (804) 967-9604
Fax: (804) 967-2411
jmumford@hdjn.com
kkransdorf@hdjn.com
Counsel for TRAVCO Insurance Company